



SIDLEY AUSTIN LLP  
ONE SOUTH DEARBORN  
CHICAGO, IL 60603  
(312) 853 7000  
(312) 853 7036 FAX

ekenney@sidley.com  
(312) 853-2062

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FOUNDED 1866

November 25, 2008

**By Email**

Kenneth G. Long, Esq.  
Senior Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611

James Costello, Esq.  
Practice Group Leader (6RC-S)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Re: Westbank Asbestos Site, Jefferson Parish, Louisiana

Dear Counsel:

The purpose of this letter is to respond, on behalf of Johns Manville (JM), to your letter of September 25, 2008, concerning the settlement of the Government's claims against JM at the Westbank Asbestos Site in Jefferson Parish, Louisiana (Site). This letter constitutes a confidential settlement communication pursuant to Rule 408 of the Federal Rules of Evidence, and therefore nothing in it shall be admissible for any purpose. This letter is not intended to constitute an Initial Notification under the terms of the Global Settlement Order (GSO) entered in Manville Corp. v. United States, No. 91 Civ. 66832 (RWS)(S.D.N.Y., October 28, 1994).

We appreciate the Government's offer, and we have carefully reviewed it. We presume your offer slipped the decimal three places to the right of your actual offer, and your offer is actually \$7.628 million, not \$7.628 billion. We are, however, somewhat puzzled that, while both your September 25, 2008 letter and your previous offer both set forth how much the Government values a shorter payment structure than the GSO contemplates, you neither accepted, rejected, nor made a counter-offer on our proposed alternative payment structure. JM has previously indicated (and reiterates) its willingness to consider this sort of approach, as further outlined below, but needs feedback from the government in order to continue to pursue this approach.

Your September 25, 2008 letter states that your proposed percentages of responsibility are "justified by the facts of the case." We believe it difficult to justify anything in a negotiation when the underlying facts are withheld. JM has long objected to the Government's refusal to disclose most of the information concerning its expenditures, including the addresses where

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work was done, and detailed cost information for the work. The Government's failure to disclose pertinent information has made it difficult for JM to justify a counter-offer, due to its belief that the Government's expenditures were inconsistent with the National Contingency Plan. We believe our April 2008 offer was generous based on the information the Government has provided.

In spite of these concerns, we do agree with the Government's statement that both parties' best interests are served by resolving this dispute without resort to the Manville Only Non-Binding Allocation of Responsibility (MONBAR) process. To that end, JM is enhancing its offer to fully and finally resolve all claims the Government might have as to offsite shipments of asbestos or asbestos-containing materials from JM's former Marrero, Louisiana plant. As in our last offer, we will propose parallel options, one under the GSO and one outside the GSO, as the Government has suggested. For purposes of settlement only, JM is proposing that under the GSO a 49% share be allocated generators. Further, we would offer that JM take 95% of the generator share, equal to that in the Government's latest offer. Thus, with the Government's claimed costs of \$27.547 million listed in your most recent offer, we would offer to settle under the GSO for \$7,052,721, using the formula  $\$27.547 \text{ million} \times 55\% \times 49\% \times 95\%$ .

As in our April 2008 offer, JM is willing to step outside the GSO annual cap limits for purposes of this settlement only. To do so, JM is willing to offer under this alternative \$6.7 million, payable in three annual equal installments due each year at the end of the calendar quarter within which a date 30 days after the effective date of a settlement occurs, again to resolve all claims for past or future costs. In addition, as in our April 2008 offer, this alternative proposal is contingent on the United States waiving any interest on unpaid balances it might otherwise be due under the GSO for Additional Sites during the three years in which we would have payments due, and deeming that JM has met the annual cap in each of those three years. This alternative offer would not affect any other current obligations under the GSO, nor would it be any precedent in future negotiations for Additional Sites (as defined in the GSO).

JM will also need as part of the settlement agreement a comprehensive release from further past or future liability with respect to all sites at which the Government could allege JM has liability due to asbestos or asbestos-containing material generated at and disposed from JM's former Marrero, Louisiana complex. In addition, JM will need reasonable documentation of the work performed by USEPA in order to satisfy our internal audit department.

Finally, we disagree that a settlement under the GSO, even if we deviate from the annual cap terms, requires public notice and court approval. Such a method would be inconsistent with the prior course of action the parties have taken for Additional Sites under the GSO. The form of settlement that US EPA and JM have used to date is a relatively simple letter agreement that provides for the settlement amount and scope of release. The rest of the settlement terms are

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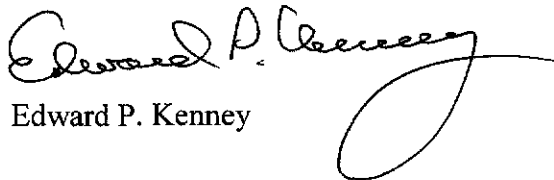
provided for by the GSO itself. This settlement would be made under the GSO order's contractual terms; the GSO itself provided the necessary public comment and court review. JM sees no reason to deviate from this practice for the Westbank Site.

There is no question that the monetary terms are a critical element of any settlement of this matter, and that JM and the Government have closed the gap considerably in that regard. However, the Government has not responded to some issues raised by JM that are significant elements of a potential settlement, including, as described above, the alternate payment structure proposed by JM, the scope of release, and the documentation of work performed. JM remains optimistic that a settlement can be reached, but unless the Government finds the current offer acceptable, the uncertainty surrounding these issues will make it difficult for JM to consider making future counter offers unless and until we see how much of a gap, if any, remains in these other critical elements.

We also note that, for purposes of who is copied on your communications to me, JM's in-house contact for this matter has changed from Bruce Ray to Brent Tracy. Bruce has taken other responsibilities within JM. Brent is familiar with this matter, and in fact worked with JM management to develop the structure of the alternative proposal first set forth in JM's April 2008 offer. Brent's address for e-mail copies is [brent.tracy@jm.com](mailto:brent.tracy@jm.com).

JM remains interested in working to resolve this case without having to resort to the MONBAR, and we hope that we can continue to have productive discussions along these lines. After you have had a chance to review this letter and discuss it with the appropriate authorities, please contact the undersigned if you wish to have further discussions.

Very truly yours,

  
Edward P. Kenney

EPK:sd

cc: Brent Tracy, JM